

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION AT MEMPHIS**

THE BOARD OF EDUCATION OF SHELBY)	
COUNTY, TENNESSEE,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	No. 2:11-cv-02101-SHM-cgc
)	
THE MEMPHIS CITY BOARD OF EDUCATION;)	
THE MEMPHIS CITY COUNCIL; THE CITY OF)	
MEMPHIS; THE DEPARTMENT OF)	
EDUCATION OF THE UNITED STATES OF)	
AMERICA; ARNE DUNCAN, in his official)	
capacity as Secretary of the Department of Education)	
of the United States of America; THE)	
DEPARTMENT OF JUSTICE OF THE UNITED)	
STATES OF AMERICA; ERIC HOLDER, in his)	
official capacity as the Attorney General of the)	
United States of America; THE STATE OF)	
TENNESSEE DEPARTMENT OF EDUCATION;)	
and PATRICK SMITH, in his official capacity as the)	
acting Commissioner of the State of Tennessee)	
Department of Education; THE BOARD OF)	
COUNTY COMMISSIONERS OF SHELBY)	
COUNTY, TENNESSEE)	
)	
Defendants.)	

**ANSWER AND COUNTER-CLAIM OF THE DEFENDANT BOARD OF COUNTY
COMMISSIONERS OF SHELBY COUNTY, TENNESSEE TO THE AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW the Defendant/Counter-claimant Board of County Commissioners of Shelby County, Tennessee (hereinafter referred to as "the Shelby County Commission"), by and through counsel and hereby answers the Amended Complaint of the Board of Education of

Shelby County, Tennessee (hereinafter referred to as "Plaintiff" or "Counter-Defendant") as follows:

AFFIRMATIVE DEFENSES

1. Plaintiff has no legal or factual basis to assert that it stands *in loco parentis* for the children who have attended the Memphis City Schools, and the Shelby County Commission affirmatively denies Plaintiff's standing to proceed in this manner.

2. The Shelby County Commission further affirmatively states, as a complete defense to the claims pled against it by Plaintiff, that its actions in this matter are compelled by the "one man, one vote" requirements of the United States Constitution as recognized by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962) and made applicable to local school boards in *Avery v. Midland County*, 390 U.S. 474 (1968). The actions of the Shelby County Commission in reapportioning and redistricting Shelby County for the purpose of appointing and then electing new members to the Shelby County School Board are further required by the Voting Rights Act of 1965. Without the intervention of the Shelby County Commission, which is the entity charged both with drawing the districts for the Shelby County School Board and filling any vacancies on such Board pursuant to Tennessee Code Annotated § 49-2-201, over 73 percent of the citizens of Shelby County would have no representation on their school board. Such a situation is constitutionally untenable for a matter of days, much less a matter of years.

ANSWER

The opening unnumbered paragraph of the Amended Complaint contains Plaintiff's characterization of its action and conclusions of law regarding the "persons and entities necessary for the court to accord complete relief in this case" and not averments of fact to which

an answer is required, but insofar as an answer may be deemed to be required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

I. PARTIES

1. The Shelby County Commission admits the allegations set forth in the first sentence of Paragraph 1 of the Amended Complaint. The second sentence of Paragraph 1 of the Amended Complaint is a conclusion of law and not an averment of fact to which an answer is required, but insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are to be affected thereby.

2. The allegations set forth in Paragraph 2 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 2 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

3. The allegations set forth in Paragraph 3 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 3 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

4. The allegations set forth in Paragraph 4 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without

sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 4 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

5. The allegations set forth in Paragraph 5 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 5 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

6. The allegations set forth in Paragraph 6 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 6 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

7. The allegations set forth in Paragraph 7 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 7 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

8. The allegations set forth in Paragraph 8 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response

is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 8 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

9. The allegations set forth in Paragraph 9 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 9 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

10. The allegations set forth in Paragraph 10 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 10 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

11. The Shelby County Commission admits the allegations set forth in Paragraph 11 of the Amended Complaint.

II. JURISDICTION AND VENUE

12. The allegations set forth in Paragraph 12 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is deemed required from the Shelby County Commission, the Shelby County Commission is

without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 12 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

13. The allegations set forth in Paragraph 13 of the Amended Complaint are not directed toward the Shelby County Commission; therefore, no response is required. If a response is deemed required from the Shelby County Commission, the Shelby County Commission is without sufficient information and knowledge to admit or deny the allegations set forth in Paragraph 13 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

14. The allegations set forth in Paragraph 14 of the Amended Complaint are denied except to admit that this Court has subject-matter jurisdiction over this declaratory judgment action.

15. The allegations set forth in Paragraph 15 of the Amended Complaint are admitted.

II. FACTUAL BACKGROUND

16. The allegations set forth in Paragraph 16 of the Amended Complaint are admitted upon information and belief.

17. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 17 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

18. In response to Paragraph 18 of the Amended Complaint, the Shelby County Commission admits that on December 20, 2010, the Memphis City Board of Education voted to immediately dissolve and surrender its Charter to operate the City of Memphis' Public school system. The Shelby County Commission is without knowledge or information as to the truth of

the remaining allegations set forth in Paragraph 18 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

19. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 19 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

20. In response to Paragraph 20 of the Amended Complaint, the Shelby County Commission denies the allegations set forth in Paragraph 20 except to admit that the surrender approved by the Memphis City Board of Education on December 20, 2010 was to be immediate.

21. The allegations set forth in Paragraph 21 of the Amended Complaint are denied except to admit that the authority relied upon by the Memphis City Schools Board of Education provides that the school board's act of dissolving and surrendering its Charter shall be fully and immediately effective.

22. The allegations set forth in Paragraph 22 of the Amended Complaint are denied except to admit that a plain reading of Chapter 375 of the 1961 Private Acts leads to the unerring conclusion that the school system's dissolution and surrender of its Charter becomes, and was expressly intended to be effective immediately.

23. The Shelby County Commission admits the allegations set forth in Paragraph 23 of the Amended Complaint.

24. The Shelby County Commission admits the allegations set forth in Paragraph 24 of the Amended Complaint.

25. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 25 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

26. The allegations contained in Paragraph 26 of the Amended Complaint are conclusions of law and not averments of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

27. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 27 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

28. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 28 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

29. The allegations set forth in Paragraph 29 of the Amended Complaint are denied except to admit that the Memphis City Council's February 10, 2011 "Resolution" (Exhibit 1 to the Amended Complaint) purports to make its approval of the Charter surrender effective immediately.

30. The allegations set forth in Paragraph 30 of the Amended Complaint are denied except to admit that the Memphis City Board of Education and its school system was immediately dissolved upon surrender of the charter, which rendered Shelby County Schools responsible to fill the void created.

31. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 31 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

32. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 32 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

33. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 33 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

34. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 34 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

35. In response to Paragraph 35 of the Amended Complaint, the Shelby County Commission admits the existence of Individuals with Disabilities Education Act (IDEA) and other similar programs, such as Section 504 of the Rehabilitation Act of 1973. However, the Shelby County Commission denies that these statutes are relevant to the claims and defenses asserted in this matter and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

36. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 36 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

37. The allegations set forth in Paragraph 37 of the Amended Complaint are denied except to admit that this Court should intercede and declare the rights and obligations of the parties to this suit in accordance with the relief requested *infra* in the Shelby County Commission's counter claim for Declaratory Judgment.

38. The Shelby County Commission denies the allegations set forth in Paragraph 38 of the Amended Complaint.

39. The Shelby County Commission admits the allegations set forth in Paragraph 39 of the Amended Complaint.

40. The Shelby County Commission admits the allegations set forth in Paragraph 40 of the Amended Complaint.

COUNT I

41. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 41 of the Amended Complaint.

42. The allegations contained in Paragraph 42 of the Amended Complaint are conclusions of law and not averments of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

43. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 43 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

44. In response to Paragraph 44 of the Amended Complaint, the Shelby County Commission admits that based upon the surrender of the Memphis City Board of Education's charter, Shelby County Schools has obligations under both state and federal law to provide a free public education to the school age children who currently reside in the boundaries of the City of Memphis. The Shelby County Commission is without knowledge or information as to the truth

of the remaining allegations set forth in Paragraph 44 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

45. The Shelby County Commission denies the allegations contained in Paragraph 45 of the Amended Complaint.

46. The Shelby County Commission denies the allegations contained in Paragraph 46 of the Amended Complaint.

COUNT II

47. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 47 of the Amended Complaint.

48. The allegation contained in Paragraph 48 of the Amended Complaint is a conclusion of law and not an averment of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

49. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 49 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

50. The Shelby County Commission denies the allegations contained in Paragraph 50 of the Amended Complaint.

51. The Shelby County Commission denies the allegations contained in Paragraph 51 of the Amended Complaint.

COUNT III

52. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 52 of the Amended Complaint.

53. In response to Paragraph 53 of the Amended Complaint, the Shelby County Commission admits that the 1961 Private Act Chapter 375 allows for charter surrender. The Shelby County Commission is without knowledge or information as to the truth of the remaining allegations contained in Paragraph 53 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

54. In response to Paragraph 54 of the Amended Complaint, Article XI, Section 9 of the Tennessee Constitution speaks for itself.

55. The allegation contained in Paragraph 55 of the Amended Complaint is a conclusion of law and not an averment of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

56. The allegation contained in Paragraph 56 of the Amended Complaint is a conclusion of law and not an averment of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

COUNT IV

57. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 57 of the Amended Complaint.

58. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 58 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

59. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 59 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

60. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 60 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

61. The allegations contained in Paragraph 61 of the Amended Complaint are conclusions of law and not averments of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

62. The Shelby County Commission denies the allegations set forth in Paragraph 62 of the Amended Complaint.

COUNT V

63. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 63 of the Amended Complaint.

64. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 64 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

65. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 65 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

66. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 66 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

67. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 67 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

68. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 68 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

COUNT VI

69. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 69 of the Amended Complaint.

70. In response to Paragraph 70 of the Amended Complaint, Article XI, Section 2 of the Tennessee Constitution speaks for itself.

71. In response to Paragraph 71 of the Amended Complaint, Tenn. Code Ann. § 49-5-409 speaks for itself.

72. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 72 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

73. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 73 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

74. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 74 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

COUNT VII

75. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 75 of the Amended Complaint.

76. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 76 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

77. In response to Paragraph 77 of the Amended Complaint, Tenn. Code Ann. § 49-10-101 speaks for itself.

78. In response to Paragraph 78 of the Amended Complaint, Tenn. Code Ann. § 49-10-109 speaks for itself.

79. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 79 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

80. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 80 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

81. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 81 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

COUNT VIII

82. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 82 of the Amended Complaint.

83. In response to Paragraph 83 of the Amended Complaint, Tenn. Code Ann. §§ 49-6-4201 and 49-6-4203 speak for themselves.

84. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 84 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

85. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 85 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

86. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 86 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

COUNT IX

87. The Shelby County Commission incorporates by reference its responses to the preceding paragraphs herein, and further denies any allegations asserted against it in Paragraph 87 of the Amended Complaint.

88. The Shelby County Commission admits the allegations set forth in Paragraph 88 of the Amended Complaint.

89. The Shelby County Commission admits the allegations set forth in Paragraph 89 of the Amended Complaint.

90. In response to Paragraph 90 of the Amended Complaint, to the extent that Plaintiff alleges that Private Act 1923, Chapter 381 in any way limits the number of members allowed to sit on the Shelby County Board of Education, this paragraph is denied.

91. The Shelby County Commission denies the allegations set forth in Paragraph 91 of the Amended Complaint. Private Act 1967, Chapter 171 was declared unconstitutional and null and void by a court of law.

92. The Shelby County Commission denies the allegations set forth in Paragraph 92 of the Amended Complaint. Private Act 1970, Chapter 293 was never ratified locally and was declared invalid by the Tennessee Secretary of State.

93. The Shelby County Commission admits that it has adopted redistricting plans for the Shelby County Board of Education. The Shelby County Commission denies the remaining

94. allegations set forth in Paragraph 93 of the Amended Complaint.

95. The allegation contained in Paragraph 94 of the Amended Complaint is a conclusion of law and not an averment of fact to which an answer is required. But insofar as an answer may be deemed required, the Shelby County Commission denies same and demands strict proof thereof if its interests are affected thereby.

96. In response to Paragraph 95 of the Amended Complaint, Tenn. Code Ann. § 49-2-201 speaks for itself. For further response, to the extent that Plaintiff alleges that Tenn. Code Ann. § 49-2-201 applies to the Shelby County Board of Education, this paragraph is denied.

97. The Shelby County Commission is without knowledge or information as to the truth of the allegations contained in Paragraph 96 of the Amended Complaint and therefore denies same and demands strict proof thereof if its interests are to be affected thereby.

98. The Shelby County Commission denies the allegations set forth in Paragraph 97 of the Amended Complaint.

99. The Shelby County Commission denies the allegations set forth in Paragraph 98 of the Amended Complaint.

100. The Shelby County Commission denies that Plaintiff is entitled to any relief, including that prayed for in the Prayer for Relief following Paragraph 98 of the Amended Complaint beginning with the words, "WHEREFORE, Plaintiff prays that the Court..." including subparts (a through d).

101. Any and all other allegations of the Amended Complaint, or as may otherwise be set forth in the prayer for relief, not specifically admitted are hereby denied.

COUNTER-CLAIM FOR DECLARATORY JUDGMENT

COMES NOW the Board of County Commissioners of Shelby County, Tennessee (hereinafter the "Shelby County Commission") by and through counsel, as Counter-claimant, pursuant to Fed. R. Civ. P. 13, and for its Counter-Claim states and alleges as follows:

THE PARTIES

1. The Shelby County Commission is the legislative branch of Shelby County, Tennessee, vested by the Shelby County, Tennessee Charter with the legislative authority to adopt ordinances or resolutions in carrying out its duties pursuant to Tennessee Code Annotated 5-.

2. Shelby County Schools is a county school system and body politic that serves as the Local Education Agency ("LEA") responsible for operating public schools in Shelby County, Tennessee as delegated by the State of Tennessee pursuant to Title 49, Tennessee Code Annotated.

JURISDICTION

3. The jurisdiction is proper in this Court pursuant to 28 U.S.C § 1331 and 28 U.S.C. § 2201.

VENUE

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to these claims occurred in this District.

FACTS

5. On January 27, 1869, the General Assembly enacted Chapter No. 30, of the Public Acts of 1869, ("Chapter No. 30") creating the Board of Education of the Memphis City Schools ("Memphis City Schools"). Chapter No. 30 provides, as follows:

That the Memphis City Schools shall hereafter be placed under the exclusive management and control of a Board of Education consisting of two members from each ward of the said city, elected as hereinafter directed, and that said Board are hereby created and constituted *a body politic and corporate* by the name and style of the Board of Education of the Memphis City Schools who shall have succession for ninety-nine years, and by the name and style aforesaid, may purchase, receive, hold and possess property of any kind for the use of said City Schools; may sue and be sued, plead and be impleaded; answer and be answered unto in all Courts of Record and Courts of inferior jurisdiction. And said Board shall have power to make, have and use a common seal, the same to break, alter and renew at their pleasure, and generally to do and execute all acts, matters and things which a corporation or body politic in law may and can lawfully do and execute. (emphasis supplied).

6. Nowhere in this grant of authority does the General Assembly deem the Memphis City Schools a "special school district." Further, this express grant of power to the School Board expired in 1968.

7. In 1961, the General Assembly enacted the Private Acts of 1961, Chapter 375 ("Chapter 375"), which provided that the Board of Education of the Memphis City Schools could surrender and dissolve its charter by resolution subject to the approval, by resolution, of the Board of Commissioners of the City of Memphis (now known as the Memphis City Council).

8. Chapter 375 was properly and officially ratified and approved and has since been operative and in effect at all times.

9. On December 20, 2010, the Board of Education of the Memphis City Schools voted to dissolve the charter of the Memphis City Schools pursuant to the authority granted by the Private Acts of 1961, Chapter 375 ("Chapter 375").

10. On February 10, 2011, the Memphis City Council voted to approve Memphis City School Board of Education's surrender of its charter to operate a public school system pursuant to Chapter 375. As, Plaintiff/Counter-Defendant has pled, the surrender of the charter of the Memphis City Schools became effective immediately.

11. On March 8, 2011, a referendum was held within the City of Memphis pursuant to Tennessee Code Annotated § 49-2-502. A majority of those who voted in this election approved the surrender of the charter of the Memphis City Schools pursuant to Tennessee Code Annotated § 49-2-502.

12. Upon the surrender of the charter of the Memphis City Schools, the Shelby County School System and the Shelby County Board of Education are required by law to accept

responsibility for the education of all of the children who were originally part of the Memphis City Schools.

13. Chapter 381 of the Private Acts of 1923 ("Chapter 381") established the current Shelby County Board of Education. Chapter 381 states that the Board shall consist of seven (7) members.

14. Tennessee Code Annotated § 49-2-201 requires that the County Board of Education be elected from "districts of substantially equal population established by resolution of the local legislative body," which in this case is the Shelby County Commission.

15. The current Shelby County Board of Education is comprised of seven (7) members, all of whom reside outside the city limits of Memphis in seven (7) districts drawn in Shelby County entirely outside of the city limits of Memphis.

16. The current seven (7) members of the Shelby County School Board have terms that expire in either 2012 (for members serving Districts 2, 4 and 6) or 2014 (for members serving Districts 1, 3, 5, and 7) .

17. Upon surrender of the charter of the Memphis City Schools, the entirety of the population of Shelby County is now included within in the Shelby County School District.

18. Approximately 73% of the citizens of Shelby County live in the City of Memphis while 27% of the citizens of Shelby County reside outside of Memphis in Shelby County. African-Americans make up approximately 66% of the population of the City of Memphis but only 44% of the population of Shelby County outside of the City of Memphis.

19. Therefore, the current Shelby County School Board was elected by only 27% of the population which it now represents. Said another way, 73% of the population of Shelby County is now represented by a School Board for whom it was given no right to vote.

20. The current Shelby County School Board is no longer elected from districts that represent an equal apportionment of the Shelby County School District's population.

21. Such a disparity grossly violates (1) the "one person, one vote" principle embodied in the Fourteenth and Fifteenth Amendments of the Constitution of the United States as set forth by *Baker v. Carr*, 369 U.S. 186 (1962) and made applicable to school boards in *Avery v. Midland County*, 390 U.S. 474 (1968) and (2) given the concentration of African-American citizens residing in the City of Memphis, the Voting Rights Act of 1965 as amended, 42 U.S.C. §§ 1973, 1983, and 1988.

22. Pursuant to Tennessee Code Annotated 49-2-201, the Shelby County Commission is the entity charged with apportioning and districting Shelby County for the purpose of electing the Shelby County School Board. The Shelby County Commission is therefore required by law to ensure that the districts from which the members of the Shelby County School Board are selected comply with the United States Constitution's "one man, one vote" requirement and the Voting Rights Act of 1965.

23. Section 7.14 of the Shelby County Charter provides as follows:

All private acts of the General Assembly of Tennessee which affect Shelby County and which are in effect on September 1, 1986, shall, to the extent not inconsistent with its charter, be deemed ordinances of Shelby County and shall remain in effect until and unless repealed or amended by the Board of County Commissioners.

24. Chapter 381 is a private act that has been specifically retained pursuant to the terms of the Shelby County Charter and is therefore an ordinance under this section which may be amended by the Shelby County Commission. Furthermore, Chapter 381 is included within the "Private Acts of Shelby County" all of which are now recognized as ordinances under Shelby County's Charter.

25. On February 28, 2011, the Shelby County Commission passed on third reading Ordinance 403 which amended Chapter 381, to increase the size of the Shelby County School Board from a 7 member Board to a 25-member Board. This Ordinance became legally effective on March 15, 2011 and is attached hereto as Exhibit 1 to this Counter- Complaint.

26. The purpose of this amendment to Chapter 381 was twofold. By increasing the number from 7 to 25, the Shelby County Commission could both retain the terms of office of the seven Shelby County School Board members who were elected in the last two county elections, and whose terms do not expired until 2012 and 2014, and at the same time could ensure that residents of the City of Memphis, which comprise at least 73% of the population of Shelby County, would have representation on the Shelby County School Board commensurate with and equal to the representation currently enjoyed by those residents of Shelby County living outside of the City of Memphis, as required by the United States Constitution and the Voting Rights Act of 1965.

27. The only way for the current members of the Shelby County School Board to retain their offices and also provide substantially equal representation on this Board to the residents of the City of Memphis was to draw districts within the City of Memphis that roughly equaled the population of those districts currently existing in Shelby County.

28. Alternatively, the Shelby County Commission could have retained a seven member County School Board, but it would have had to re-draw those seven districts to cover all of Shelby County. In so doing, four to six members of the Shelby County School Board would have likely lost their offices because of the constitutional requirements described herein.

29. Pursuant to Ordinance 403, the Shelby County Commission adopted a Resolution on February 28, 2011 redistricting Shelby County into 25 districts, retaining the original seven

districts and drawing 18 more districts in the City of Memphis ("Redistricting Resolution," attached hereto as Exhibit 2 to this Counter-Complaint).

30. The Redistricting Resolution created 18 vacancies on the Shelby County School Board.

31. The Shelby County Commission is authorized by Tennessee Constitution, Article VII, Section 2 and Tennessee Code Annotated § 49-2-201(a)(1) to fill vacancies in the office of County School Board by appointment.

32. The Redistricting Resolution therefore allows the Shelby County Commission to appoint the new members of the Shelby County Board of Education until such time as the next general county election occurs in August of 2012.

33. Pursuant to this authority, the Shelby County Commission is in the process of filing these 18 vacancies on the Shelby County School Board by interviewing applicants for these positions. The new school board to be created by combining these newly appointed members with the existing 7 members will hereinafter be referred to as the "Unified Shelby County School Board."

34. Despite the fact that the reapportionment and redistricting was required by the United States Constitution and the Voting Rights Act of 1965, and despite the fact that the Shelby County Commission redistricted the County in such a way as to retain the offices of the existing members of the existing Shelby County School Board, some of these existing members and the Plaintiff/Counter-Defendant have publicly threatened and stated that they will not recognize the new members of their Board to be appointed by the Shelby County Commission.

35. One of the purported reasons for these public comments, according to members of the Shelby County School Board, is that a new statute passed by the Tennessee General

Assembly and signed into law on February 11, 2011, purports to delay any consolidation of the Memphis City Schools with the Shelby County Schools until the year 2014.

36. This new law was passed as Chapter 1 of the Public Acts of 2011 ("Chapter 1").

37. Chapter 1 was enacted hastily for the express purpose of derailing the consolidation of the Memphis City Schools with the Shelby County Schools. It purports to amend Tennessee Code Annotated § 49-2-502, which allows the transfer of the administration of a special school district to a county school district so long as the board of the special school district authorizes the transfer and such transfer is approved by voters residing in the special school district in a referendum election.

38. Chapter 1 purports to delay any transfer sought to be effected under section 49-2-502 until the third school year following the attempted transfer. It also purports to establish a transition planning commission. Finally, it repeals the ban on special school districts and municipal school districts imposed by 49-2-501 and 6-58-1101. The import of this final provision is that the current Shelby County School System can reconfigure itself into one special school district or multiple municipal school districts in order to avoid any eventual consolidation with the Memphis City Schools and to avoid responsibility for the education of the students of these schools.

39. Based on the existence of Chapter 1, the current members of the Shelby County School Board claim that the new Unified Shelby County School Board will have no right to exist until the transition period imposed by the Chapter 1 has concluded. Plaintiff, by filing its Amended Complaint against the Shelby County Commission, has also challenged the Shelby County Commission's right to redistrict, reapportion, and appoint new members of the Unified School Board in the face of Chapter 1.

40. For instance, in an email sent to Shelby County Commissioner Mike Carpenter, Shelby County School Board member David Reeves stated as follows, "My understanding is that a 'unified' Board will not exist for three (3) years as defined by state law." (attached hereto as Exhibit 3.)

41. Other members of the Shelby County School Board have stated publicly that they will not recognize the newly appointed members of their Board and have moved to intervene in this case to contest their appointment.

42. However, Chapter 1 has no applicability to the consolidation of the Memphis City Schools and the Shelby County Schools.

43. Chapter 1, by its express terms applies only to transfers effectuated under Tennessee Code Annotated § 49-2-502. Since the surrender of the Memphis City School's Charter was accomplished pursuant to Chapter 375, Chapter 1, by its own express terms, can have no application to the consolidation of the Memphis City Schools with Shelby County Schools.

44. Furthermore, even if Chapter 1 were applicable to the instant set of facts, it is unconstitutional and illegal. Accordingly it should be declared null and void.

COUNT I

DECLARATORY JUDGMENT – THE REDISTRICTING AND APPOINTMENT OF THE UNIFIED SHELBY COUNTY SCHOOL BOARD

45. The Shelby County Commission adopts by reference Paragraphs 1 through 44 of this Counter-Complaint as if stated verbatim herein.

46. The Shelby County Commission was mandated by the "one man, one vote" requirement of the United States Constitution, as articulated in *Baker v. Carr*, and by the Voting

Rights Act of 1965 to reapportion and redistrict all of Shelby County so that the residents of Shelby County residing within the city limits of the City of Memphis would have equal and proportionate representation on the Unified Shelby County School Board.

47. In order to comply with its obligation to provide representation to the 646,889 citizens of Shelby County who reside within the City of Memphis, the Shelby County Commission passed Ordinance 403 and the February 28, 2011 Redistricting Resolution, which added 18 seats to the Shelby County School Board and allowed those seats to be appointed until the next general county election.

48. Plaintiff has publicly contested these actions and has filed this lawsuit, wrongfully stating that the Shelby County Commission has no authority to take such actions. Members of Plaintiff have stated that they will not honor or recognize the members of the Shelby County School Board appointed pursuant to the Redistricting Resolution.

49. In bringing this suit against the Shelby County Commission and by publicly threatening that they will refuse to recognize the new Unified Shelby County School Board, the actions of the members of Plaintiff have created a justiciable case and controversy that requires this Court to determine and declare the legal rights of the Parties.

50. Accordingly, this Court should enter a declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, stating the following:

a. That upon the surrender of the Charter of the Memphis City Schools and the approval of this surrender by the Memphis City Council, the entirety of Shelby County was included in the Shelby County School District;

b. That the "one man, one vote" requirement of the United States Constitution, the Voting Rights Act of 1965 and Tennessee Code Annotated § 49-2-201 all

require that the residents of Shelby County residing within the City of Memphis have representation on the Shelby County School Board;

c. That the one man, one vote requirement is applicable to the Shelby County School District;

d. That the current Shelby County School Board no longer represents districts made up of an equal apportionment of the Unified Shelby County School District's population;

e. That Ordinance 403 adopted by the Shelby County Commission on February 28, 2011 increasing the size of the Shelby County School Board is a valid ordinance authorized by law;

f. That the Redistricting Resolution adopted by the Shelby County Commission on February 28, 2011, including Exhibit B to the Resolution which designates the 25 districts on a map, is a valid Resolution authorized by law;

g. That the redistricting of Shelby County created 18 vacancies on the Shelby County School Board which the County Commission was authorized to fill by appointment pursuant to Tennessee Constitution, Article VII, Section 2 and Tennessee Code Annotated §§ 49-2-201(a)(1) and 49-2-202; and

h. That the Shelby County Commission be allowed to proceed with this appointment process.

COUNT II

DECLARATORY JUDGMENT -- ALTERNATIVE REDISTRICTING PLAN

51. The Shelby County Commission adopts by reference paragraphs 1 through 50 as if restated verbatim herein.

52. The Redistricting Resolution adopted by the Shelby County Commission on February 28, 2011 embodied two alternative redistricting plans.

53. The Redistricting Resolution provided that if Ordinance 403, which expanded the number of Shelby County School Board members from 7 to 25, was declared invalid for any reason, the County Commissioners would still be required to reapportion and redistrict all of Shelby County pursuant to the "one man, one vote" requirement of the United States Constitution and pursuant to the Voting Rights Act of 1965.

54. Thus the Redistricting Resolution contained an alternate redistricting plan which retained the number of members of the Shelby County School Board at 7.

55. Attached to the Redistricting Resolution as Exhibit C was an alternate redistricting plan that divided all of Shelby County into 7 new districts.

56. If the redistricting plan that is designated as Exhibit C is adopted as the Shelby County Board of Education redistricting plan, all 7 members of the Unified Shelby County School Board will be appointed.

57. Accordingly, should Ordinance 403 be declared illegal or void for any reason, the Shelby County Commission requests that this Court alternatively declare the following:

a. That the Redistricting Resolution adopted by the Shelby County Commission on February 28, 2011, including Exhibit C to the Resolution which designates 7 new districts of Shelby County, is a valid resolution authorized by law; and

b. That the redistricting of Shelby County pursuant to Exhibit C of the Redistricting Resolution created 7 vacancies on the Shelby County School Board, which the County Commission is authorized to fill by appointment pursuant to Tennessee Constitution, Article VII, Section 2 and Tennessee Code Annotated §§ 49-2-201(a)(1) and 49-2-202.

COUNT III

DECLARATORY JUDGMENT – CHAPTER 1 IS NOT APPLICABLE

58. Counter Plaintiff adopts by reference 1 through 57 of this Counter Complaint as if restated verbatim herein.

59. The surrender of the Charter of the Memphis City Schools has been finally approved by the Memphis City Council pursuant to Chapter 375.

60. This surrender was final on February 10, 2011.

61. By its express terms, Chapter 1 applies only to special school districts that transfer their authority pursuant to Tennessee Code Annotated § 49-2-502.

62. Thus Chapter 1 has no legal effect on the surrender of the Charter of the Memphis City Schools or the transfer of the authority for operating such schools to the Shelby County School Board.

63. Members of the Plaintiff have nonetheless publicly stated that they will not recognize the authority of the Unified Shelby County School Board to be appointed by the Shelby County Commission based on their interpretation of Chapter 1.

64. Accordingly, this Court should declare that Chapter 1 has no legal affect or applicability to the transfer of the Memphis City Schools to the Shelby County School System.

COUNT IV

DECLARATORY JUDGMENT – CHAPTER 1 IS UNCONSTITUTIONAL SPECIAL LEGISLATION

65. The Shelby County Commission adopts by reference paragraphs 1 through 64 of this Counter-Compliant as if restated verbatim herein.

66. The first section of Chapter 1 provides that it shall only apply to counties where, acting pursuant to Tennessee Code Annotated 49-2-502, the proposed transfer of the

administration of the schools in a special school district to the county board of education would result in an increase in student enrollment within the county school system of one hundred percent (100%) or more.

67. There is no other county in Tennessee in which a special school district is operating the transfer of which would result in an increase in student enrollment within the county school system of one hundred percent (100%) or more.

68. Tennessee Constitution Article XI, Section 8 provides as follow:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

69. The Tennessee Supreme Court has interpreted this constitutional provision to be applicable to private or special legislation affecting only one county or municipality in its exercise of governmental functions. *See, e.g., Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454 (1973).

70. Therefore, Chapter 1 suspends the general law and constitutes special legislation only applicable to Shelby County Tennessee.

71. There is no rational basis for treating the schools systems in Shelby County different than those in any other county in Tennessee, especially given that the other metropolitan counties within the state of Tennessee, including Davidson County, Knox County, and Hamilton County all operate consolidated county school systems.

72. For these reasons, the Shelby County Commission is entitled to a declaratory judgment that Chapter 1 violates Tennessee Constitution Article XI, Section 8 and is therefore void and of no effect.

COUNT V.

**DECLARATORY JUDGMENT – CHAPTER 1 VIOLATES THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION**

73. The Shelby County Commission adopts by reference paragraphs 1 through 72 of this Counter-Complaint as if restated verbatim herein.

74. Chapter 1 is impermissibly vague and therefore violates the guarantees of due process embodied in the Fourteenth Amendment of the United States Constitution for the following nonexclusive reasons:

- a. Chapter 1 provides no direction as to when the transition plan it requires must be completed.
- b. Chapter 1 does not provide whether the transition plan must be approved nor does it provide who, if anyone, should determine if the plan is ultimately acceptable.
- c. Chapter 1 does not explain the consequences of a failure to adopt a transition plan.
- d. Chapter 1 does not direct whether a special school district ceases to exist upon the certification of the referendum or at some later time such as during or after the planning period.
- e. Chapter 1 provides no funding for the expenses of the transition board which is required by its provisions.

f. Chapter 1 provides no definition of the meaning of "competent citizen" for the purpose of serving on the transition board pursuant to Section (b)(2)(B).

g. Chapter 1 provides no direction on how often the transition board should meet, the rules under which the transition board should operate or the ultimate duties of the transition board.

75. For all of these reasons, "a person of ordinary intelligence" cannot discern what Chapter 1 requires or how it should be implemented.

76. Accordingly, the Shelby County Commission is entitled to a judgment that Chapter 1 is impermissibly vague and thus violates the Fourteenth Amendment of the United States Constitution.

COUNT VI.

DECLARATORY JUDGMENT – CHAPTER 1 VIOLATES TENNESSEE CONSTITUTION, ARTICLE II, SECTION 17

77. The Shelby County Commission adopts by reference paragraphs 1 through 76 of this Counter Complaint as if restated verbatim herein.

78. Tennessee Constitution, Article II, Section 17, provides as follows:

No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

79. The caption of Chapter 1 is "an act to amend Tennessee Code Annotated, Title 49, Chapter 2, relative to the administration of local education agencies."

80. Chapter 1 embraces more than one subject and fails to express those subjects in its caption.

81. Chapter 1 significantly alters the procedure for transfer of special school districts under Tennessee Code Annotated § 49-2-502.

82. Chapter 1 amends Tennessee law to allow the creation of special school districts and municipal school districts, where currently the formation of such school districts is disallowed.

83. Chapter 1 further repeals Tennessee Code Annotated § 6-58-112(b) in that it allows the creation of municipal school districts.

84. None of these subjects are expressed in its caption.

85. Accordingly, this Court should declare that Chapter 1 violates Tennessee Constitution Article II, Section 17 and that it is null and void both because it embraces more than one subject and because these subjects are not expressed in the caption.

COUNT VII

DECLARATORY JUDGMENT – CHAPTER 1 VIOLATES TENNESSEE CONSTITUTION, ARTICLE II, SECTION 24

86. The Shelby County Commission adopts by reference paragraphs 1 through 85 of this Counter-Complaint as if restated verbatim herein.

87. Tennessee Constitution, Article II, Section 24 states that no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the State share in the cost.

88. Chapter 1 will impose increased expenditures of Shelby County.

89. Chapter 1 does not provide that the State shall share in such costs.

90. Accordingly, this Court should declare that Chapter 1 violates Tennessee Constitution, Article II, Section 24.

COUNT VIII

DECLARATORY JUDGMENT – CHAPTER 1 IS A RETROACTIVE LAW THAT VIOLATES TENNESSEE CONSTITUTION, ARTICLE I, SECTION 20 AND TENNESSEE CODE ANNOTATED § 1-3-101

91. The Shelby County Commission adopts paragraphs 1 through 90 of this Counter-Complaint as if restated verbatim herein.

92. Tennessee Constitution, Article I, Section 20 provides that "no retrospective law or law impairing the obligations of contracts shall be made."

93. Tennessee Code Annotated § 1-3-101 provides that "the repeal of a statute does not affect any right which accrued, any duty imposed, any penalty occurred, nor any proceeding commenced under or by virtue of the statute repealed."

94. Chapter 1 was enacted after the Memphis City Schools had adopted the Resolution to surrender its Charter and after that Resolution to surrender had been approved by the Memphis City Council.

95. Therefore Chapter 1's passage affected a commenced proceeding in violation of Tennessee Code Annotated § 1-3-101 and was a retrospective law under Tennessee Constitution, Article I, Section 20.

96. Therefore, this Court should declare that Chapter 1 violates Tennessee Constitution Article I, Section 20 and Tennessee Code Annotated § 1-3-101.

PRAYER FOR RELIEF

WHEREFORE, Counter-Plaintiff, the Shelby County Commission, requests that this Court grant the following relief:

1. A declaratory judgment declaring its rights, duties and obligations with respect to the matters set forth herein including:

a. That the County Commission was legally obligated pursuant to the requirements of "one man, one vote" as recognized in *Baker v. Carr* and by the Voting Rights Act of 1965 to

reapportion and redistrict Shelby County so that the residents of Shelby County residing within the City of Memphis would have immediate representation on the Shelby County School Board;

b. That the County Commission was legally authorized to add 18 seats to the Shelby County School Board in order to provide representation to those residents of Shelby County residing within the City of Memphis and to also retain the seats of the currently elected members of the Shelby County Board of Education;

c. That the County Commission was authorized to appoint 18 new members to the Shelby County School Board to serve until the next general election since these seats existed as vacancies after the County was reapportioned and redistricted; and

d. That the County Commission was authorized by law to adopt Ordinance 403 and the Redistricting Resolution of February 28, 2011.

2. Alternatively, for a declaratory judgment that the Shelby County Commission was authorized to adopt the Redistricting Resolution of February 28, 2011, including Exhibit C attached thereto, authorizing the Shelby County Commission to redistrict the whole of Shelby County into 7 new school board districts and to appoint the members of the Shelby County School Board to serve until the next general election in order to provide immediate representation on the Shelby County School Board to those citizens of Shelby County residing within the City of Memphis.

3. For a declaratory judgment that Chapter 1 has no applicability to the transfer of the Memphis City Schools to the Shelby County School Board since such transfer was effected by the surrender of the Charter of the Memphis City Schools by the Memphis City School Board on December 20, 2010, and approved by the Memphis City Council on February 10, 2011, as authorized by Chapter 375.

4. For a declaratory judgment that Chapter 1 is illegal and void pursuant to Tennessee Constitution, Article XI, Section 8 as special legislation only applicable to Shelby County not supported by any rational basis.

5. For a declaratory judgment that Chapter 1 is illegal and void pursuant to the Fourteenth Amendment of the United States Constitution because it is impermissibly vague.

6. For a declaratory judgment that Chapter 1 is illegal and void pursuant to the Tennessee Constitution, Article II, Section 17 because it embraces more than one subject and those subjects are not expressed in its caption.

7. For a declaratory judgment that Chapter 1 is illegal and void pursuant to Tennessee Constitution, Article II, Section 24 because it requires an increased expenditure on Shelby County and does not provide that the State will share in this cost.

8. For a declaratory judgment that Chapter 1 is illegal and void pursuant to Tennessee Constitution, Article I, Section 20 and Tennessee Code Annotated § 1-3-101 because it is a retrospective law and a retrospective amendment to a statute which affects a proceeding previously commenced.

9. An award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

10. Such other further relief as to which this Counter-Plaintiff is entitled.

11. An expedited hearing pursuant to Federal Rule of Civil Procedure 57.

Respectfully submitted,

s/ Lori H. Patterson

Leo Bearman, Jr. (#8363)

Lori H. Patterson (#19848)

Imad I. Abdullah (#24285)

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*Attorneys for Defendant/Counter-Plaintiff Shelby
County Board of Commissioners*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of March, 2011, a true and correct copy of the foregoing Answer and Counter-Claim of Defendant Shelby County Board of Commissioners has been forwarded, via electronic filing, to the following ECF participants:

Charles W. Cagle Jason Michael Bergeron Samuel Jackson Lewis King Krieg & Waldrop, PC 201 4th Avenue North Suite 1500 Nashville, TN 37219	Michael R. Marshall Ernest G. Kelly Mary C. Laster Evans Petree, PC 1000 Ridgeway Loop Road Memphis, TN 38120
Lawrence F. Giordano Mary Ann Stackhouse Lewis King Krieg & Waldrop, PC P. O. Box 2425 620 Market Street 5th Fl., One Center Square Knoxville, TN 37901	Phillip Eric Oliphant Herman Morris, Jr Regina Morrison Newman City of Memphis Legal Dept 125 N. Main St. Memphis, TN 38112
Allan J. Wade Brandy S. Parrish Allan J. Wade, PLLC One Commerce Square Suite 2275 Memphis, TN 38103	J. Gregory Grisham Leitner Williams Dooley & Napolitan 80 Monroe Avenue, Suite 800 Memphis, TN 38103
Kevin Steiling Deputy Attorney General P.O. Box 20207 Nashville, TN 37202	

All other parties will be served by regular U.S. Mail as follows:

Eric Holder, Jr. U.S. Attorney General
Office of Attorney General of the USA
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Edward Stanton, III U.S. Attorney
U.S. Attorney Office for the Western District of TN
167 North Main Street, Suite 800
Memphis, TN 38103

Arne Duncan, Secretary of Dept of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

/s/Lori H. Patterson

Item #: 14

Moved by: BAILEY

Seconded by: MULROY

Prepared by: Comm. Steve Mulroy

Approved by: Christy L. Kinard
Assistant County Attorney

ORDINANCE NO. 403

**ORDINANCE TO INCREASE THE NUMBER OF MEMBERS SERVING ON
THE SHELBY COUNTY SCHOOL BOARD TO TWENTY-FIVE DURING A
TRANSITION PERIOD TO A SINGLE COUNTY-WIDE SCHOOL BOARD
BY AMENDING THE SHELBY COUNTY CODE OF ORDINANCES.
SPONSORED BY COMMISSIONER STEVE MULROY.**

WHEREAS, As established by Section 6.02(B) of the Shelby County Charter, Chapter 381 of the Private Acts of 1923 is given full force and effect for education purposes, except for modifications of the residency and compensation provisions of such Private Act; and

WHEREAS, Chapter 381 of the Private Acts of 1923 provides for a seven-member County School Board and is deemed an Ordinance, pursuant to Section 7.14 of the Shelby County Charter, but only to the extent such Private Act is not inconsistent with the Charter, and only until and unless repealed or amended by the Shelby County Board of Commissioners; and

WHEREAS, Pursuant to Section 49-2-502 of the Tennessee Code, a Referendum is set for March 8, 2011, to transfer administration of the schools within the Memphis City School District to the Shelby County School Board; and

WHEREAS, If the Referendum passes, it would lead to a single school system serving all of Shelby County, requiring provision be made for a new unified, County-wide School Board representing both the current territory of the Shelby County School District as well as territory within the Memphis City School District; and

WHEREAS, On February 10, 2011, the Memphis City Council voted to approve the surrender of the Memphis City School Board's Charter in accordance with Chapter 375 of the 1961 Private Acts; and

WHEREAS, The above facts, plus the impending receipt of new population data from the 2010 U.S. Census, makes it necessary to establish a Redistricting Plan for the Shelby County School District; and

WHEREAS, Leaving the current districting scheme and representation on the

EXHIBIT

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Shelby County School Board in place until the next regularly scheduled County-wide election would lead to a lack of representation of any kind for City of Memphis voters, which represents roughly 74% of the County's population; and

WHEREAS, Redistricting County-wide and leaving the number of Shelby County School Board members at seven would require a Districting Plan that could place current incumbent members of the Shelby County School Board out of their assigned districts, effectively shortening their terms of office; and

WHEREAS, To avoid shortening the terms of duly elected incumbents while adequately representing Shelby County voters as a whole, it is necessary to increase the total number of members serving on the Shelby County School Board during a transition to a single County-wide School Board; and

WHEREAS, Based on current population data, 18 new school board members would need to be elected from the City of Memphis so as to represent populations substantially equal to those populations represented by the seven incumbent members of the Shelby County School Board, for purposes of meeting the requirements of Section 49-2-201(a)(1) of the Tennessee Code and thereby providing City of Memphis voters adequate representation based on "one-person, one vote" principles of the Fourteenth Amendment of the U.S. Constitution; and

WHEREAS, The County Commission's Ad Hoc Committee on Redistricting is separately considering adoption of a School Redistricting Plan that would draw 18 Districts within the City of Memphis for representation on a single County-wide School Board.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That Chapter 2 of the Shelby County Code of Ordinances be and is hereby amended so as to provide that the total number of members serving on the Shelby County School Board shall be increased from seven members to 25 members during any transition period established by a School Board Redistricting Plan adopted by the County Commission in the event a Referendum is passed by the voters in Shelby County to transfer the administration of the schools located within the Memphis City School District to the Shelby County School Board.

BE IT FURTHER ORDAINED, That all other provisions of Chapter 381 of the Private Acts of 1923, as amended, shall remain in full force and effect for education purposes, except as modified by Section 6.02(A) of the Shelby County Charter and this Ordinance.

BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

BE IT FURTHER ORDAINED, That this Ordinance shall become effective in accordance with the Shelby County Charter, Article II, Section 2.06(C).



Mark H. Luttrell, Jr.
County Mayor

Date: _____

ATTEST:

Caroline J. [Signature]
Clerk of County Commission

FIRST READING: February 14, 2011

SECOND READING: February 16, 2011

ADOPTED
THIRD READING: February 28, 2011

NOTE: PURSUANT TO SHELBY COUNTY CHARTER, SECTION 2.07(c), IF COUNTY MAYOR FAILS TO SIGN OR VETO RESOLUTION WITHIN TEN DAYS AFTER RECEIPT FROM THE CLERK, THE ORDINANCE BECOMES EFFECTIVE WITHOUT THE SIGNATURE, UPON THE EXPIRATION OF THE TEN-DAY PERIOD OR AT A LATER DATE IF THE RESOLUTION SO PROVIDES.

Item #: 16

Moved by: RITZ

Seconded by: CARPENTER

Prepared by: Sandy Rutherford

Approved by: Christy L. Kinard
Assistant County Attorney

RESOLUTION ESTABLISHING A SCHOOL BOARD REDISTRICTING PLAN FOR THE SHELBY COUNTY BOARD OF EDUCATION, PURSUANT TO THE PROVISIONS OF TENNESSEE CODE ANNOTATED, SECTION 49-2-201, AND AS SET FORTH BY ORDINANCE NO. 403 FOR THE PURPOSE OF ESTABLISHING A SINGLE COUNTY-WIDE SCHOOL BOARD WITH DISTRICTS OF SUBSTANTIALLY EQUAL POPULATION THAT COMPRISES ALL AREAS OF SHELBY COUNTY, TENNESSEE. SPONSORED BY COMMISSIONER WALTER BAILEY, JR.

WHEREAS, Tennessee Code Annotated, Section 49-2-201, requires that county boards of education be elected by the people; and

WHEREAS, Tennessee Code Annotated, Section 49-2-201, further provides that members of county boards of education shall be residents of and elected from districts of substantially equal populations established by Resolution of the local legislative body; and

WHEREAS, Population shifts have altered the composition of certain school board districts so that they are no longer each of a substantially equal population; and

WHEREAS, Pursuant to Tennessee Code Annotated, Section 49-2-502, a Referendum is set for March 8, 2011, to transfer administration of the schools within the Memphis City School District to the Shelby County School Board; and

WHEREAS, The Board of Commissioners of Shelby County, Tennessee, did by Resolutions of March 9, 1998, January 24, 2000, March 13, 2000, April 25, 2002, and April 4, 2004, either adopt or amend plans to redistrict Shelby County Schools' seven single-member districts; and

WHEREAS, It is necessary to amend the most current School Redistricting Plan that was approved on April 4, 2004, to accurately reflect the number of Shelby County School Board members set forth by Ordinance No. 403.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That a Revised School Board Redistricting Plan, as per the map designated as Exhibit 'B', attached hereto and incorporated herein by reference, is hereby adopted and replaces all previously adopted School Redistricting Plans approved by the Shelby County Board of Commissioners.

BE IT FURTHER RESOLVED, That in the event there is any determination that the 25 single-member School Board Redistricting Plan identified in this Resolution as Exhibit 'B' cannot be implemented for whatever reason, then the alternative seven District School

EXHIBIT

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Board Redistricting Plan that is designated as Exhibit 'C', attached hereto and incorporated herein by reference, shall serve as the alternative School Board Redistricting Plan for the Shelby County Board of Education.

BE IT FURTHER RESOLVED, That each district shall be composed of the areas encompassed by the wards and precincts of the County of Shelby as embodied in a map attached as Exhibit 'B'.

BE IT FURTHER RESOLVED, That the Shelby County Board of Commissioners will appoint Interim Unified School Board members to serve in the 25 single-member School Board Districts created by the Shelby County Board of Commissioners to provide constitutional representation to all of Shelby County based on 2000 U.S. Census data to include School Board District Areas previously held by the Memphis City Schools Board per Resolution adopted by the Shelby County Board of Commissioners on February 14, 2011, keeping the seven existing Shelby County School Board members intact until their next appointed election date, so long as the School Board Redistricting Plan identified in this Resolution as Exhibit 'B' is implemented, and also redefining these seven School Board Districts to comprise areas of Shelby County that are outside of the City of Memphis limits as embodied in a map and attached as Exhibit 'B'.

BE IT FURTHER RESOLVED, That the Shelby County Board of Commissioners has created a 25 single-member Redistricting Plan for the Shelby County Board of Education in which every current school board member lives in a proposed district where no other current school board member lives, and this Redistricting Plan is embodied and attached hereto as Exhibit 'B'.

BE IT FURTHER RESOLVED, That the Election Commission is hereby directed to hold an election in August of 2012 to fill the positions of all members of the Shelby County Board of Education as established under this plan or any subsequent Redistricting Plan adopted for the Shelby County Board of Education except those for Districts 1, 3, 5 and 7, as designated in Exhibit B, whose current terms do not expire until August 2014. Should the School Board Redistricting Plan that is designated as Exhibit C be implemented instead, then the positions of all members will be filled at the election to be held in August of 2012.

BE IT FURTHER RESOLVED, That those members of the Shelby County Board of Education elected in August 2012 and/or those members currently elected to fill positions for Districts 1, 3, 5, and 7 as designated in Exhibit B shall all serve until August 31, 2014, at which time an election will be held to fill all positions of the Shelby County School Board pursuant to the Redistricting Plan in place at that time.

BE IT FURTHER RESOLVED, That the Clerk of the County Commission is hereby directed to transmit to the Shelby County Clerk an attested copy of the adopted Redistricting Map, attached hereto as Exhibit 'B', as well as the Redistricting Map attached hereto as Exhibit 'C' that will serve as the approved School Board Redistricting Plan should Exhibit 'B' not be implemented for any reason, so that the said County Clerk may keep a permanent copy of the Districting Map that clearly shows the boundaries of the newly expanded Shelby County School Board Districts.

BE IT FURTHER RESOLVED, That the Clerk of this Commission shall forward to the Secretary of State, State of Tennessee, an attested copy of this Resolution, including Exhibits 'B' and 'C'.

BE IT FURTHER RESOLVED, That the Clerk of this Commission shall forward an attested copy of this Resolution, including Exhibits 'B' and 'C', to the Shelby County Election Commission.

BE IT FURTHER RESOLVED, That this Resolution shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06(B) sixteen days after Ordinance No. 403 is adopted by the Shelby County Board of Commissioners but no sooner than the certification of the March 8, 2011, School Referendum results, if such Referendum is approved by the voters of the City of Memphis.



Mark H. Luttrell, Jr.
County Mayor

Date: _____

ATTEST:

Caroline Wright
Clerk of County Commission

AS AMENDED

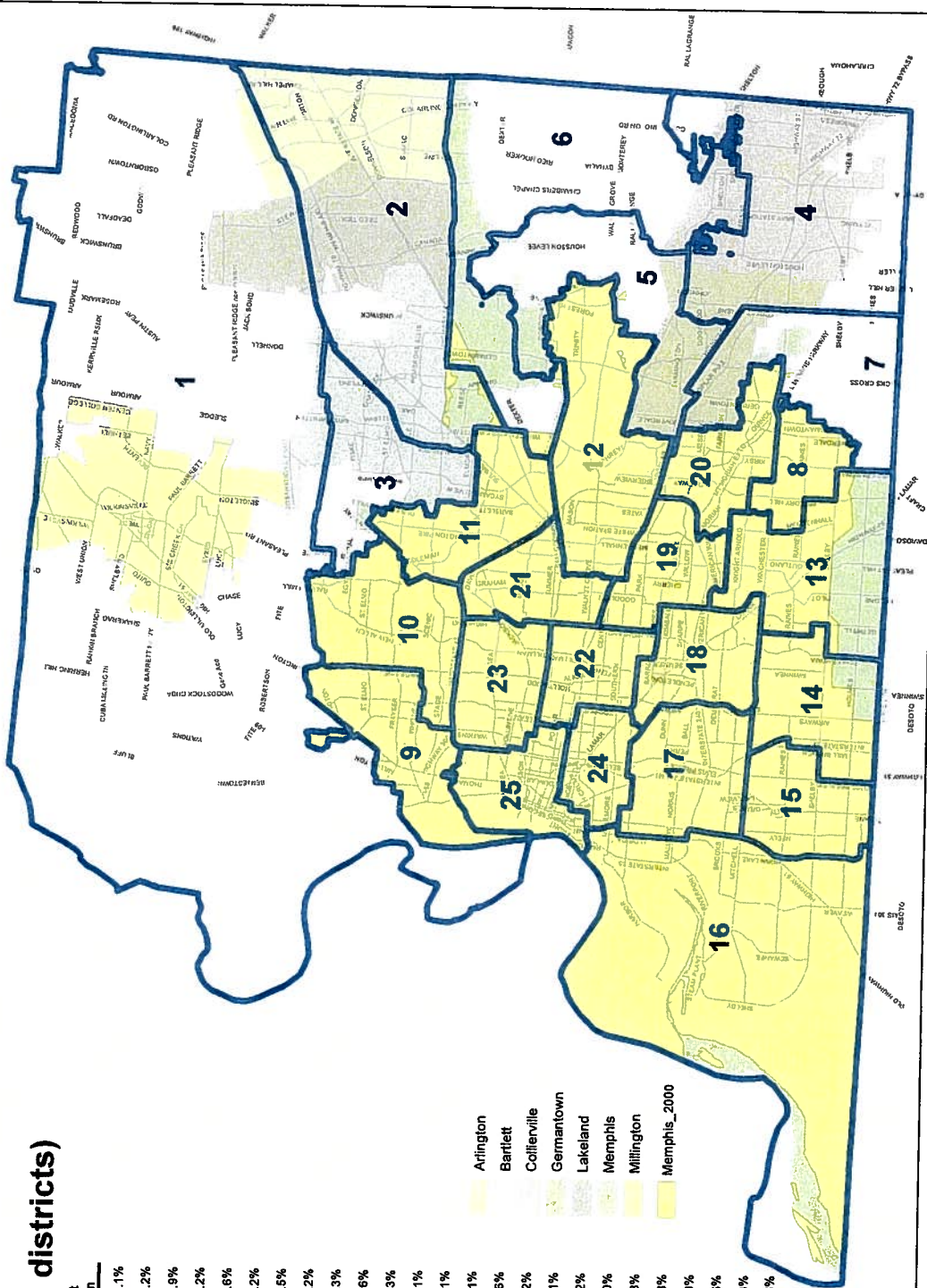
ADOPTED: FEBRUARY 28, 2011

NOTE: PURSUANT TO SHELBY COUNTY CHARTER, SECTION 2.07(c), IF COUNTY MAYOR FAILS TO SIGN OR VETO RESOLUTION WITHIN TEN DAYS AFTER RECEIPT FROM THE CLERK, THE RESOLUTION BECOMES EFFECTIVE WITHOUT THE SIGNATURE UPON THE EXPIRATION OF THE TEN-DAY PERIOD OR AT A LATER DATE IF THE RESOLUTION SO PROVIDES.

EXHIBIT B **Shelby County (25 districts)**

DISTRICT	Population	Deviation from target (35,898)	Percent deviation
1	35,159	-740	-2.1%
2	35,821	-78	-0.2%
3	34,845	-1,054	-2.9%
4	35,834	-65	-0.2%
5	35,697	-202	-0.6%
6	36,677	778	2.2%
7	35,735	-164	-0.5%
8	35,821	-78	-0.2%
9	36,017	118	0.3%
10	37,179	1,280	3.6%
11	36,377	478	1.3%
12	35,489	-410	-1.1%
13	35,518	-381	-1.1%
14	35,918	19	0.1%
15	35,692	-207	-0.6%
16	35,126	-773	-2.2%
17	35,506	-393	-1.1%
18	36,681	782	2.2%
19	35,544	-355	-1.0%
20	36,552	653	1.8%
21	35,266	-633	-1.8%
22	36,209	310	0.9%
23	36,831	932	2.6%
24	35,431	-468	-1.3%
25	36,549	650	1.8%

Arlington
Bartlett
Collierville
Germantown
Lakeland
Memphis
Millington
Memphis_2000



* Data is from U.S. Census Bureau
Census 2000 by census blocks

Prepared By:
Memphis & Shelby County Division Of Planning & Development
This map is not a legal survey nor is it warranted as to its completeness or accuracy.
The data contained herein is from a variety of digital sources which do not necessarily
align as they should. The user is cautioned to check with Planning & Development
before making any decision based on its content.




February 28, 2011



EXHIBIT C

Shelby County (7 districts)


DISTRICT	Population
1	128,268
2	128,213
3	128,157
4	128,098
5	128,296
6	128,181
7	128,259


 Shelby Co Districts


Municipalities


 Arlington


 Bartlett

 Collierville

 Germantown

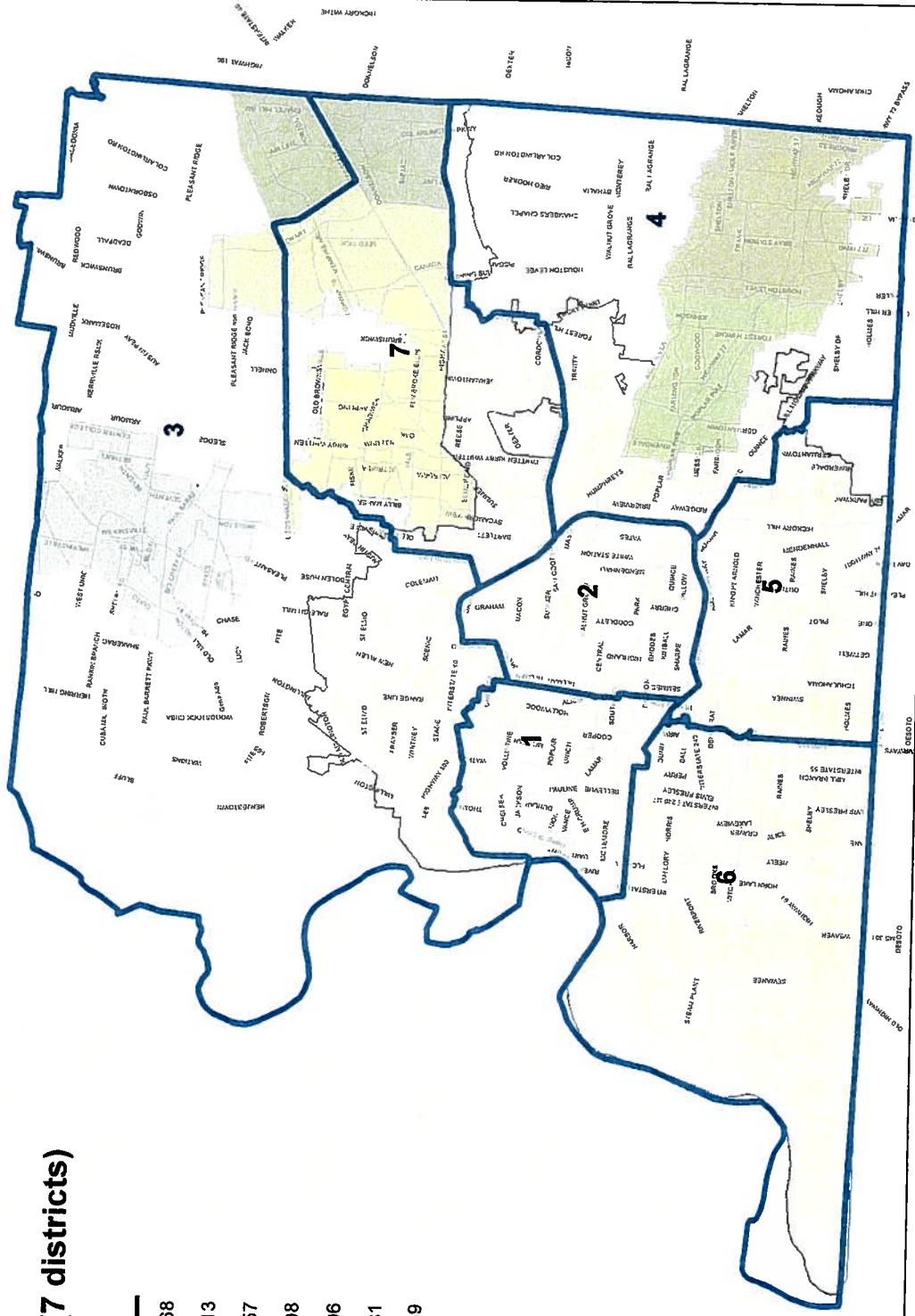
 Lakeland

 Memphis

 Millington

* Data is from U.S. Census Bureau
Census 2000 by census blocks

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February 28, 2011



-----Original Message-----

From: David Reaves [mailto:dreaves@scsk12.org]

Sent: Wednesday, March 09, 2011 5:38 PM

To: mike.carpenter@shelbycountyttn.gov

Cc: David Pickler; Mike Wissman; Joseph Clayton; Snowden Carruithers; Keith McDonald; Bill Dries

Subject: Unified Shelby County School Board

Mr. Carpenter,

I appreciate the fact that you are looking out for district 3 and the position that I was constitutionally elected to represent. As I was legally elected to this board by the citizens of district 3, I feel I have no reason to "apply" for a spot on a unified board. My understanding is that a "unified" board will not exist for 3 years as defined by state law.

Furthermore, those who elected me have a vested interest and could be disenfranchised by such an action(if I am removed) which could lead to legal action from my district against the county commission. This would be the same as saying that their vote was did not count in August.

I would urge you to not continue down this road. If you want unity in this community, this would be the wrong way to make it happen. If you are reasonable and a man of good faith, put a stop to this and let us work this out by way of state law.

David Reaves

